Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

VALUE

IMPARTIAL

CANADIAN FORCES GRIEVANCE BOARD

2008 ANNUAL REPORT

INDEPENDENT

FAIRNESS

Canada

Canadian Forces Grievance Board 2009

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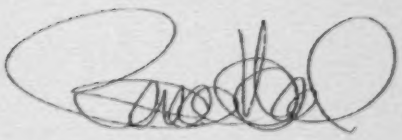
March 31, 2009

The Honourable Peter MacKay
Minister of National Defence
National Defence Headquarters
MGen Georges R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister,

Pursuant to section 29.28(1) of the *National Defence Act*, I hereby submit the 2008 annual report on the activities of the Canadian Forces Grievance Board for tabling in Parliament.

Yours truly,



Bruno Hamel

Chairperson

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MESSAGE FROM THE CHAIRPERSON & CEO

This is the eighth annual report from this Board. Like the others, this report endeavours to present a snapshot of the year's activities while reflecting on the role and underlying *raison d'être* of the office.

The primary rationale of the Board is to add to the adjudicative fairness of the military grievance system by the provision of an independent review. However, we only review approximately 40% of the files at the Final Authority level. We believe that trust in the system would be enhanced by permitting all grievors to have access to our independent review of their grievance. We will continue to make the point to senior Canadian Forces leadership that it is in the interest of the CF to see this Board have an expanded mandate.

An important strategy of this Board during the past year was to share information with senior CF leadership and members. As indicated in this report, recurring themes in grievances may point to systemic problems, such as a poorly drafted policy. Through our new publication *Perspectives* and through our insert in the *Maple Leaf* we intend to keep CF members and decision-makers informed about our work on a regular basis.

Over the last year, we continued to improve our operational efficiency, while maintaining the high quality of our analyses and Findings and Recommendations. I am pleased to say that our efforts were supported, as in previous years, by sound management initiatives and activities consistent with the government's priorities and with the Public Service Renewal objectives.

I have had the honour of serving as the acting chair since March 1, 2008; it has been a distinct pleasure for me because of our dedicated and knowledgeable staff. Without them, and without the support of our committed part-time members, we could not have achieved the results you will find within the pages of this report.

I am confident I leave the Chair's responsibilities in the good hands of our recently appointed Chairperson, Bruno Hamel. We all look forward to working with him.

Jim Price
A/Chairperson

We believe that trust in the system would be enhanced by permitting all grievors to have access to our independent review of their grievance.

THE CANADIAN FORCES GRIEVANCE BOARD

MISSION

TO REVIEW GRIEVANCES IN ORDER TO RENDER FAIR AND IMPARTIAL FINDINGS AND RECOMMENDATIONS IN A TIMELY AND INFORMAL MANNER TO THE CHIEF OF THE DEFENCE STAFF AND THE GRIEVOR.

THE GRIEVANCE CONTEXT

In the year 2000, Canada introduced an independent component to the Canadian Forces (CF) grievance system representing a major innovation in the handling of military grievances. That innovation was the creation of the Canadian Forces Grievance Board (CFGB).

As stipulated in the *National Defence Act* (NDA) and article 7.12 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), the Board's mandate is to review all military grievances referred to it by the Chief of the Defence Staff (CDS). Following its review, the Board submits its Findings and Recommendations to the CDS, simultaneously forwarding a copy to the grievor. It is the CDS who is the final decision-maker on the grievance. The CDS is not bound by the Board's report, but must provide reasons, in writing, in any case where the Board's Findings and Recommendations are not accepted.

The Board has quasi-judicial powers and can summon witnesses and compel them to give oral or written evidence. Although hearings would normally be held in private, the Chair can deem a public hearing would benefit the participants and serve the public interest.

QR&O, 7.12 sets out the types of grievances that can be referred to the Board. Specifically:

(1) The Chief of the Defence Staff shall refer to the Board any grievance relating to the following matters:

(a) administrative action resulting in the forfeiture of, or deductions from, pay and allowances, reversion to a lower rank or release from the Canadian Forces;

(b) application or interpretation of Canadian Forces policies relating to expression of personal opinions, political activities and candidature for office, civil employment, conflict of interest and post-employment compliance measures, harassment or racist conduct;

(c) pay, allowances and other financial benefits; and

(d) entitlement to medical care or dental treatment.

(2) The Chief of the Defence Staff shall refer every grievance concerning a decision or an act of the Chief of the Defence Staff in respect of a particular officer or non-commissioned member to the Grievance Board for its Findings and Recommendations.

> *"If any person in the fleet shall find just cause of complaint of the unwholesomeness of the victual, or upon other just ground, he shall quietly make the same known to his superior, or captain, or commander in chief, as the occasion may deserve, that such present remedy may be had as the matter may require; and the said superior, captain, or commander in chief, shall, as far as he is able, cause the same to be presently remedied..."*
>
> Excerpt from Royal Navy, Articles of War 1757.

Section 29.12 of the NDA stipulates that the CDS may also refer any other grievance to the Board.

As an administrative tribunal, the Board is independent from the Department of National Defence and the CF, although the CF has overall responsibility for the grievance process. The Board reports directly to Parliament through the Minister of National Defence, who tables the Board's Annual Report.

BOARD STRUCTURE

The Board consists of Governor in Council appointees who, alone or in panel, are responsible for reviewing grievances and issuing Findings and Recommendations to the CDS.

Under the NDA, the Governor in Council may appoint a full-time Chair, at least one full-time Vice-Chair, and one part-time Vice-Chair. In addition, the Governor in Council may appoint any other full or part-time members the Board needs to carry out its functions. Appointments may be for up to four years and may be renewed. The Governor in Council may also remove members for cause.

CFGB's employees provide support to Board members. Grievance officers and legal counsel work particularly closely with Board members to provide analyses and legal opinions on a wide range of issues. The Board's corporate services' responsibilities include strategic planning, performance reporting, human resources, finance, information management and information technology, and communications.

The Board consists of Governor in Council appointees who, alone or in panel, are responsible for reviewing grievances and issuing Findings and Recommendations to the CDS.

THE CF GRIEVANCE SYSTEM: A TWO LEVEL PROCESS

Level I: Review by the Initial Authority within the CF

A common misconception about the CF grievance process is that a grievor can submit a grievance directly to the Board. In fact, the process begins with the grievor's Commanding Officer (CO).

- **Step 1:** The grievor submits the grievance to his or her CO.
- **Step 2:** If the CO cannot act as the Initial Authority (IA), the grievance is submitted to someone who can, such as the Director General at National Defence Headquarters responsible for dealing with the subject matter. If the grievor is satisfied with the IA's decision, the grievance process ends there.

- *Grievances mandatorily referred to the Board must be decided by the CDS personally.*
- *The CDS is not bound by any Findings and Recommendations of the Board; however, the CDS must provide reasons, in writing, in any case where the Board's Findings and Recommendations are not accepted.*

Level II: Review by the CDS

Grievors who are dissatisfied with the IA's decision may ask to have their grievance reviewed at the Final Authority (FA) level, that being the CDS or his delegate, whose decision is final.

Grievors initiate this second level of review as follows:

- **Step 1:** The grievance is submitted at the FA Level.
- **Step 2:** If the grievance falls within the Board's mandate, the CF forwards the grievor's file, on behalf of the CDS, to the Board. Following its review, the Board submits its Findings and Recommendations to the CDS who makes the final decision on the grievance.

THE YEAR IN REVIEW

In 2008, the Board placed particular emphasis on raising stakeholder awareness of the value-added the CFGB brings to the complaint resolution processes, so they can benefit from its wealth of experience, knowledge and expertise.

CFGB'S VALUE-ADDED

The Board's position as an independent body with quasi-judicial powers adds adjudicative fairness to the CF grievance system and contributes to improved conditions of service. In addition to providing an in-depth, fair and impartial review of every grievance referred to it, the Board gathers valuable information from grievances, maintains an ever growing library of precedents and alerts the CF to recurrent and systemic issues.

In 2008, the Board placed particular emphasis on raising stakeholder awareness of the value-added the CFGB brings to the complaint resolution processes, so they can benefit from its wealth of experience, knowledge and expertise. With this goal in mind, the Board has, over the past year, launched new publications, upgraded some of its main communication tools and practices and continued to seek an expansion of its mandate.

Sharing Lessons Learned with Decision-Makers

After eight years in operation, it is clear to the Board that information gleaned from its review of grievances should be shared with decision-makers to prevent problems and inform future decisions. Although submitted individually, grievances sometimes serve as valuable indicators of trends or broader issues and can provide insight into current or future challenges.

Acting on this idea, the CFGB launched *Perspectives*, a newsletter targeted primarily at senior CF officials at the Department of National Defence Headquarters. In its first issue, published in mid-October, the Board shared some of the valuable lessons learned from the more than 1,000 cases for which it has provided Findings and Recommendations since its creation in 2000.

The first issue of *Perspectives* summarized three major trends reflected in a number of grievances: inconsistencies in regulation and policy; errors in recruit enrolment; and problems with procedural fairness. *Perspectives* was so well received by senior officials that the Board has decided to publish it on a regular basis.

> *"I just wanted to let you know that I very much enjoyed receiving a copy of your first issue of* Perspectives... *Very useful to see the trends and issues that you and your team are finding in your work. I will be circulating* Perspectives *to my senior military and civilian personnel as there are some issues where I believe we can influence the way ahead."*
>
> Rear-Admiral Bryn M. Weadon
> Assistant Deputy Minister (Fin CS)
> Department of National Defence.

Reaching out to CF Members and Other Stakeholders

In 2008, the Board continued to reach out to clients and stakeholders, a two-way process that allows it to:

- Build awareness throughout the CF of the Board's mandate and foster an understanding of the service it provides, as well as the impact of its work and its value-added;
- Gather valuable information, through exchanges with members of the military, stakeholders and other audiences, thereby increasing its knowledge of the challenges faced by military personnel in their day-to-day activities.

Some of the Board's outreach initiatives included:

Base Visits

The effectiveness and credibility of the Board's work depend upon two essential factors. First, Board members must possess an

accurate picture of current real-life conditions in the CF. Second, the Board's work is enhanced by spreading knowledge in the CF of what we do and how we do it. To address these requirements, the Board visits bases and units in the field several times each year.

In 2008, Board members and senior management visited CF Base (CFB) Edmonton, Alberta, CFB Esquimalt, British Columbia, and CFB Valcartier, Quebec. During these visits, the Board toured operational and training units, and held round-table discussions with local authorities such as unit adjutants, administration staff, and personnel involved in the dispute resolution process. At each base, the Board also hosted town hall sessions, open to all.

Insert in The Maple Leaf

In the fall of 2008, the CFGB reached an agreement to publish a special insert in *The Maple Leaf*, the weekly national newspaper of the Department of National Defence and the CF. *The Maple Leaf* insert is a new way for the CFGB to maintain direct contact with the men and women of the CF and their families. The insert focuses on summaries of cases reviewed by the Board determined to be of particular interest for CF members. It also includes background information on the Board's history, mandate, composition and the CF grievance system as a whole.

Web Site

The Board's Web site is part of its communications strategy designed to share information with CF members and stakeholders. Throughout the year, the Board regularly updated its Web site to add new information and case summaries. A newly improved and user-friendly search engine made it easier for users to navigate hundreds of case summaries posted since 2000.

www.cfgb-cgfc.gc.ca

The *eBulletin*

In 2008, the Board continued to issue its quarterly electronic newsletter. The *eBulletin*, available by subscription through the CFGB Web site, highlights current and relevant cases reviewed by the Board. It describes the Board's Findings and Recommendations and the CDS' final decision for each case and also provides updates on key grievance statistics and Board activities.

A useful vehicle for informing subscribers about the impact of the Board's work, the *eBulletin* also highlights systemic changes that arise from grievance outcomes. It is aimed at stakeholders and key audiences, such as CF decision-makers and members involved in the grievance process, similar administrative tribunals and the media who report on military events. The *eBulletin's* distribution list has grown over the last year to approximately 500 subscribers.

Pursuing Mandate Expansion

Currently, the Board reviews approximately 40% of grievances at the Final Authority (FA) level. Expanding its mandate to include all grievances at the FA level means that every grievance would benefit from an independent, external review and, at the same time, have access to the Board's considerable knowledge and unique in-house expertise.

As indicated in previous reports, the Board is firmly of the view that it is capable of reviewing a broader range of grievances than it does at present and that its mandate should be expanded.

In 2008, there were a number of discussions with senior CF officials regarding the expansion of the Board's mandate and talks will be ongoing in 2009. Having dealt with the backlog of grievances and developed its expertise and an efficient process, the Board is now well positioned to take on more files.

In May 2008, the Chair appeared before the Standing Committee on National Defence (NDDN) and took the opportunity to outline

to Committee members that the Board's contribution to the fairness of the military grievance system would be much greater with an expanded mandate. The CFGB told NDDN members that the Board's limited mandate prevents it from seeing many grievances that would otherwise benefit from the Board's expertise and impartiality.

STRIVING FOR MANAGEMENT EXCELLENCE

The Board's corporate vision is to ensure it has the enabling resources, the right set of skills and the performance excellence required to effectively deliver on its mandate, strategic outcomes and objectives, as well as to contribute to the Government of Canada's priorities.

Throughout the past year, the CFGB focused on delivering this vision and on ensuring the Board's management initiatives were well aligned with the Public Service Renewal priorities, as well as the priorities outlined in the Clerk of the Privy Council's *Fourteenth Annual Report to the Prime Minister on Public Service of Canada*. In this report, the Clerk stressed the importance of maintaining a public service that is relevant, innovative and central to the development of the country.

Furthermore, the Board used the Management Accountability Framework (MAF), the government's own blueprint for sound management, as the foundation for its operational and strategic planning, with a particular emphasis on values and ethics.

Corporate Initiatives

The Clerk of the Privy Council identified four priorities for the Public Service Renewal agenda. One of these priorities was improving the integration of business planning with human resources (HR) planning to respond to changing demographics, projected labour shortages, effective labour relations and evolving learning needs. Acting on this priority, the Board expanded its Integrated Business and Human Resources Plan to include an HR three-year strategic plan and a Succession Plan. These initiatives ensure that HR is a fully integrated element of the Board's normal business planning and reporting.

Other corporate initiatives included developing an Integrated Risk Management Framework and incorporating a risk rating approach into the CFGB decision-making process. Senior management recently reviewed and renewed the Board's corporate risk profile and assigned accountabilities for the implementation of mitigation strategies.

The Board also made it a management priority to ensure that the integrity and completeness of information within the organization is not compromised or lost. To this end, the Board not only implemented a records management system and enhanced management applications, it expanded its information management activities to include all of the elements of an Information Management Program: IM Governance; IM Architecture; IM Guidance, Advice and Tools; and IM Policy.

> *"In this first Annual Report, we would like to cite just a few examples of organizations that, in our initial contacts with them, have demonstrated leadership in promoting integrity through prevention... Many departments, agencies and tribunals have already been open to and proactive in working with our office on prevention. Among these, we can cite the Canadian Forces Grievance Board..."*
>
> Public Sector Integrity Canada
> 2007-2008 Annual Report.

A Positive Management Accountability Framework Assessment

In 2008, Treasury Board communicated the results of its first MAF assessment of the CFGB. The assessment concluded that the Board has sound management practices and

delivers value to decision-makers. In the 19 rated areas of the assessment, the CFGB received one "strong" rating, 15 "acceptable" ratings and three "opportunity for improvement" ratings. No area of management was rated as "attention required."

Some notable areas include corporate governance, human resources planning, official languages and values and ethics. The assessment noted that "the Board's senior management is engaged in all levels of the corporate governance structure, facilitating oversight of, and informed decision-making on, the Board's single business line."

Acting on the MAF assessment, the Board has developed an action plan to address the areas where opportunities for improvement were identified.

Human Resources Performance Recognized

In 2008, the Board was recognized twice for its efforts to align its HR management with the priorities of the Public Service Renewal and to improve its staffing processes and practices:

- In its 2007-08 Annual Report, the Public Service Commission of Canada (PSC) listed the CFGB as one of the top four performers in the Small Organizations category. The classification was based on the assessment of the 2007-08 Departmental Staffing Accountability Reports conducted by the PSC.
- The CFGB is an active member of the HR Co-op Group established in 2005 and comprised of five small federal organizations with judicial or quasi-judicial powers. The group's mandate is *"to explore opportunities to leverage their capacity to implement and sustain human resources management practices that support departmental business objectives and goals of the Public Service Modernization."* Last year, the Board shared the HR Best Team Award for 2007 with its partners within the HR Co-op Group for their *"innovative approach to sharing information, practices and tools... using a collaborative model aligned with the concept of shared services."* The team was recognized by the HR Council, which represents the leadership of the HR community in the Federal Public Service.

An Ethical Work Environment

In 2008, the CFGB continued to highlight the importance of public service values as the foundation for ethical behavior. One deliverable in this area was the launching of a five-year action plan to promote the Public Service Values and Ethics within the Board. The plan included disseminating information to all employees on key issues, cases and examples, and mandatory training. Employees also participated in anti-harassment and anti-discrimination workshops. The Board believes these activities provide employees with the opportunity to explore the foundational concept of values and ethics, and to learn how to deal with conflicts of interest and resolve ethical dilemmas and accountability issues.

The Chairperson's Merit Award

Recognizing the achievements of employees is part of CFGB's organizational values. In 2008, the Board introduced the Chairperson's Merit Award to "recognize an individual or a team who achieved an exceptional work performance and made meritorious contributions to the Board beyond the normal expectations." *The first Merit Awards were announced at the Board's 2008 annual staff meeting held in November.*

OPERATIONAL STATISTICS

Improving Internal Processes

As part of its ongoing efforts to improve efficiency, the CFGB last year commissioned an in-depth study of its internal file review processes.

The assessment was based on a combination of interviews and reviews of analysis reports, Findings and Recommendations and data from the CFGB's case management tracking system. Acting on the study's recommendations, the Board implemented several changes. One key change that resulted in significant savings in time was the addition of a case conference, which takes place at an early stage of the review process and includes the assigned team leader, grievance officer and legal counsel to identify key issues and problems. The net result of this change is an increased efficiency in the case review by the Board.

A Timely Review

Previously, the Board established an average six-month timeline to complete a grievance. A process introduced in 2007, in coordination with the Director General Canadian Forces Grievance Authority, with the aim of improving the overall efficiency of case review at the Final Authority level, resulted in increasing the elapsed time the grievance would stay at the Board. The decline in the number of cases completed at the Board within the six-month average is shown, for cases referred in 2007, in Table 1. In 2008, after the process was modified and changes were introduced to the internal file review processes, the Board regained the desired level of efficiency, with 82% of the cases referred completed by the Board under the six-month limit.

Workload

Categories of Grievances Received

Figure 1 demonstrates the percentage breakdown for each category of grievances received at the Board (financial, general, harassment/discrimination and release). Grievances related to financial issues continued to predominate.

Figure 1

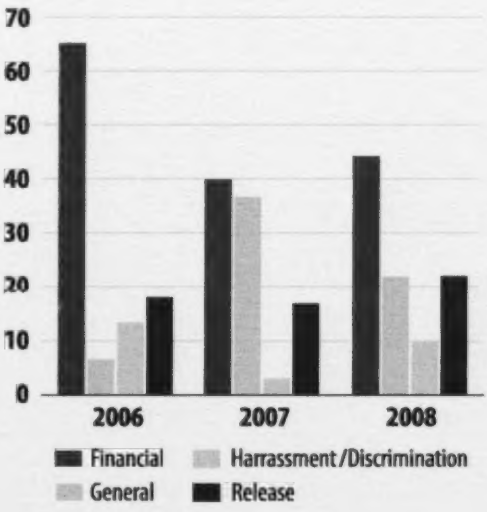


Table 1

Year Referred to CFGB	# Cases Received	#Cases Completed	Less than 6 months	6 months to 1 year	More than 1 year
2005	80	80	10%	23%	68%
2006	63	63	48%	27%	25%
2007	167	147*	24%	59%	17%
2008	65	22*	82%	18%	0%

*Balance of cases received will be completed in future years.

Status of the Case Inventory

Since its inception, the Board has worked hard to maintain a steady state of operations where its inventory of cases does not contain files older than one year. Last year, the Board reached an even higher level of efficiency and completed 130 cases. Only 31 of these cases have been with the Board for more than one year, mainly due to their complexity. By the end of 2008, the Board had only 55 cases left in its inventory.

Table 2 outlines the distribution by outcomes of the 130 cases completed by the Board in 2008.

CDS Decisions

In 2008, the Board received CDS decisions in response to 105 grievances. Eight grievances for which the Board had issued Findings and Recommendations were withdrawn at the CDS level. As shown in Table 3, the CDS agreed or partially agreed with 89.5% of the Findings and Recommendations from the Board.

Table 2

Grievance Categories	Grievance Reviews Completed in 2008					Total
	Upheld	Partially Upheld	Withdrawn due to CF Informal Resolution	Withdrawn	Denied	
Financial	9	4	10	3	36	**62**
General	8	14	6	1	14	**43**
Harassment-Discrimination		1		1	2	**4**
Release	1	3	2	1	14	**21**
Total	**18**	**22**	**18**	**6**	**66**	**130**

Table 3

CFGB's Findings and Recommendations (F&R)	CDS Decisions Received in 2008					Total
	CDS fully endorses CFGB's F&R	CDS partially endorses CFGB's F&R	CDS does not endorse CFGB's F&R	CDS accepts CF Informal Resolution	Case withdrawn at the CDS Level	
To uphold the grievance	8	3	5	1	1	**18**
To partially uphold the grievance	8	9	2		2	**21**
To deny the grievance	48	6	4		5	**63**
Withdrawal due to CF Informal Resolution				10		**10**
No Standing *	1					**1**
Total	**65**	**18**	**11**	**11**	**8**	**113**

* No standing – the Party does not have the right to make a legal claim or seek judicial enforcement of a duty or right (e.g. a non-member of the CF)

CASE SUMMARIES

Claim for pay for unattended days of training and the right to receive instruction in language of choice

Compulsory retirement vs. medical employment limitations leading to medical release

Claiming discrimination after a release for drug use

Grievance challenges the way situational assessments are done

Relief from the performance of military duty

Errors in enrolment

Discretionary power under Home Leave Travel Allowance (HLTA)

Claim for pay for unattended days of training and the right to receive instruction in language of choice

Board Findings and Recommendations

The grievor, a Class A reservist, was selected to attend a bilingual course with the CF. He therefore booked some vacation days with his civilian employer to attend the course.

The grievor decided to leave the training after having completed only four days of studies in the first module of the course. He did this when he was informed the following module would only be offered in English. As a result, the grievor asked to be paid for seven days of Class A Reserve Service for the first module of the course and 13 days of Class B Reserve Service for the second module of the course which he did not attend. He also claimed his right to instruction in French.

The Initial Authority (IA) recognized the special circumstances of this case. Thus the grievor was offered payment for four days of Class A Reserve Service for the first module of the course but denied the claim for the additional three days of Class A and 13 days of Class B Reserve Service for the second module of the course. The IA also indicated, without providing further details, that she would take the necessary steps to ensure this type of situation did not recur.

The Board found that, according to the relevant regulations, the grievor is entitled to be paid for four days of Class A Reserve Service for the work performed in the first module of the course. The Board also found the grievor is not entitled to 13 days of pay for Class B Reserve Service for the second module of the course. The Board also found the grievor is entitled to receive his instruction in French under the *Official Languages Act* and CF Administrative Order (CFAO) 9-53, LANGUAGE OF INSTRUCTION.

The Board recommended the CDS grant the grievor payment for four days of Class A Reserve Service for the first module of the course. The Board also recommended the CDS not grant the grievor any pay on Class B Reserve Service for the second module of the course and authorize the grievor to resume his course in French as soon as possible. The Board also recommended that the training offered by the CF comply with the *Official Languages Act* and the principles of CFAO 9-53. Lastly, the Board recommended that, once the grievor has passed, the completion date be made retroactive to the date he would have initially completed the course and that the merit lists be amended accordingly.

CDS Decision

The CDS partially supported the Board's Findings and Recommendations. The CDS agreed the grievor should be paid for the days of Class A service he completed during the first module. However, the CDS did not support the Board's systemic recommendation that training offered by the CF comply with the *Official Languages Act* and the principles of CFAO 9-53. Although he fully supported the provisions in question, the CDS held that this one case fails to demonstrate the CF system as a whole is non-compliant.

The CDS did not support the Board's recommendation to backdate the date on which the grievor passed the course and did not revise the grievor's personnel evaluation report or the merit lists. However, since the grievor suffered some inconvenience because the second module of the course was not available in French, and although the complainant cannot be compensated for a service that was not rendered, the CDS held it would be fair to allow him to serve on Class B for a period equivalent to the length of this module, in addition to the regular services that the grievor will perform for his unit. He accordingly authorized this solution.

Compulsory retirement vs. medical employment limitations leading to medical release

Board Findings and Recommendations

Since he would have attained the compulsory retirement age (CRA) of 55 years, the grievor's service end date was established as April 1, 2005. However, in September 2004, he was assigned medical employment limitations (MEL). Due to the lack of any available position, no accommodation was possible and the grievor was released under Item 3(b) of the table to *Queen's Regulations & Orders for the Canadian Forces*, article 15.01– medical reason.

Confusing the issue, an initial release message under Item 5(a) – retirement age was issued in December 2004 prior to the administrative review decision rendered that same month recommending medical release on April 1, 2005. The grievor was informed of the recommendation for 3(b) instead of 5(a) release in January 2005 just over two months before the end of his service. The grievor was also advised he could cash out his remaining leave or take the time off.

The grievor alleged he did not understand the reason why he had to take his annual leave for the next year prior to his release. He specifically stated that because he was forced to take his annual leave before reaching CRA, he was on leave two weeks before his release, when he was to finalize the administration of his release. Thus, the grievor requested a six-month extension of his service as he alleged was the practice in cases of medical release.

As the grievor rejected a request to extend the deadline for dealing with the grievance, his file did not have the benefit of an Initial Authority (IA) decision. However, the subject-matter expert (SME) who reviewed the file, indicated that even if an extension beyond the CRA was possible, in order to take advantage of the six months' notice generally allocated for medical release, it is rarely authorized and only given under extraordinary circumstances. In the SME's view, granting an extension in this case would create a discriminatory practice disadvantageous to members released without medical employment limitations at the CRA.

The Board found the CF was justified in not granting the grievor a six-month extension because he had reached his CRA.

The Board also found that the grievor was entitled to all his retirement leave and that he was treated in accordance with the policies then in effect.

The Board recommended the CDS deny the grievance.

CDS Decision

The CDS agreed with the Board's Findings and Recommendations to deny the grievance and confirmed the grievor's remaining leave prior to release was correctly administered. Thus, the grievor's release date remains that specified by the terms of service he signed and is in accordance with the regulations applicable to the CRA.

Claiming discrimination after a release for drug use

Board Findings and Recommendations

The grievor admitted he was addicted to crack cocaine. Given that he had no previous drug offences, he was sent to a rehabilitation centre and provided support upon return to his unit. The grievor was placed on Counselling and Probation (C&P) for a period of one year and underwent urine testing shortly thereafter. The urine tests showed renewed cocaine use by the grievor. As a result, the CF took steps to release the grievor under Item 5(f) of the

table to *Queen's Regulations & Orders for the Canadian Forces*, article 15.01, in accordance with the CF drug policy.

The grievor contended that, given his addiction disability, his release was discriminatory under the *Canadian Human Rights Act* (CHRA). He further alleged his relapse was due to inadequacies in the treatment and rehabilitation opportunities afforded him by the CF. The grievor also argued that, even if his release was justified, it should have been categorised under item 5(d) and not 5(f).

The Initial Authority (IA) held that the grievor's release was justified under the CF drug policy, which was designed not only to preserve military operational readiness but also to safeguard its members and the public, and maintain discipline, reliability, morale, as well as cohesion. The IA further stated the grievor's 5(f) release was appropriate given the circumstances and denied the grievance.

The Board found the grievor was provided with rehabilitation, an aftercare plan, guidance and support, and the CF was not to blame for his relapse. The Board also found that the provisions of the CF drug policy were applied fairly in this case.

The Board found no discrimination against the grievor based on his addiction to crack cocaine as the prohibition against the use of illicit drugs in a CF setting is a *bona fide* occupational requirement. Given his continued use of illicit drugs, the Board also found the grievor did not meet the Universality of Service Principle and his release did not contravene the CHRA.

The Board found that the grievor's 5(f) release was justified and correctly administered based on the circumstances. Therefore, the Board recommended the CDS deny the grievance.

CDS Decision

The CDS agreed with the Board's Findings and Recommendations to deny the grievance and was satisfied the CF provided the grievor with an extensive opportunity for rehabilitation which included a six-week residential treatment followed by a continuing care program. The CDS was also satisfied the C&P was correctly implemented and administered within a reasonable delay, thus all the necessary measures were in place to help the grievor overcome his addiction. The CDS commented that administrative measures are not a remedy to drug addictions and, therefore, the date they were administered has no bearing on the grievor's successful completion of a drug program, or direct effect on his relapse.

In this case, the CDS was satisfied the drug policy was properly applied and agreed with the Board's finding that the CF did not improperly discriminate against the grievor since abstinence from illicit drug use in the CF is a *bona fide* operational requirement. Therefore, the CDS determined the grievor's compulsory release did not contravene the CHRA and his 5(f) release item was correct.

Grievance challenges the way situational assessments are done

Board Findings and Recommendations

Following a harassment complaint against three Respondents, the Responsible Officer (RO) concluded the allegations did not meet the definition of harassment. The grievor contended that his complaint was not investigated and that he was in fact harassed. As redress, the grievor requested an investigation, but later stated he would be willing to accept an unbiased third party ruling as to whether harassment had occurred and whether an investigation was needed.

As the RO's Situational Assessment (SA) was not completed in writing, it was difficult for the Board to determine what had been considered in deciding the allegations did not meet the definition of harassment.

The Board found the definition contained in Defence Administrative Order and Direction 5012-0 is sufficiently broad to include, as harassment, a remark made by one of the respondents if it happened as reported in the grievance. The Board also found that the RO's decision not to investigate the matter was not reasonable and that, as the events reported were sufficiently recent, a proper investigation could still be conducted.

The Board also found the chain of command and the RO demonstrated good will and acted reasonably in offering the grievor Alternate Dispute Resolution (ADR).

The Board recommended the CDS uphold the grievance and direct that a harassment investigation be conducted. The Board also recommended that the Harassment Prevention and Resolution Guidelines be amended to require that SAs be completed in writing, disclosed to all parties and kept as part of the record.

CDS Decision

The CDS partially agreed with the Board's Findings and Recommendations.

The CDS disagreed that the conduct, if it happened as reported, met the *prima facie* definition of harassment and found it was reasonable, under the circumstances, for the RO to decide not to investigate. The CDS adopted the position that, without a written SA, it is not possible to determine whether harassment occurred. The CDS disagreed with the Board's recommendation to uphold the grievance and to conduct an investigation.

The CDS did however direct the Vice-Chief of the Defence Staff to initiate an in-depth SA into the grievor's allegations and to conduct an investigation should the assessment conclude the harassment criteria were met.

The CDS agreed with the Board's recommendation that, to maintain procedural fairness, the Harassment Prevention and Resolution Guidelines should be reviewed and consideration be given to requiring that all future SAs be completed in writing and kept on record.

Relief from the performance of military duty

Board Findings and Recommendations

Following a preliminary investigation into complaints lodged primarily by his Commanding Officer (CO), the grievor was relieved of his duties.

Following a summary investigation, it was determined that the grievor had violated CF policy designed to protect cadets from abuse. He was placed on Counselling and Probation (C&P) for failing in his duties as a Cadet Instructor Cadre (CIC) Officer. The grievor was placed on a personnel list under the *proviso* that he first obtain approval from his CO before accepting any future CIC position. He was also barred from any further unit employment.

The grievor contested these measures and asked to be reinstated as the Unit Training Officer. In addition, since he had never received formal notice of suspension without pay, the grievor submitted a claim for damages.

Despite the fact he had ordered the investigation and implemented the administrative measures against the grievor, the CO also acted as the Initial Authority (IA) and denied the grievance. The Board concluded that the CO, having made previous determinations in this matter,

could not act impartially and his IA decision concerning this grievance should therefore be set aside.

The Board also found that the grievor was not provided with appropriate disclosure of relevant documents, nor given an opportunity to present his observations or properly defend himself. Thus it concluded that the grievor's right to procedural fairness had been breached. However, the Board further determined the prejudice suffered by the grievor as a result of this breach was remedied within the grievance process framework.

On examining the evidence, notably various statements and representations, the Board agreed that some of the grievor's behaviour met the definition of harassment. However, it found that a C&P was overly harsh under the circumstances and that a Recorded Warning would have been a more appropriate administrative measure. The Board concluded that the initial decision to temporarily relieve the grievor of his duties and remove him from his unit was reasonable, but to subsequently suspend him for an indeterminate period was not. The Board also found the grievor was not entitled to back pay retroactive to the date he was relieved from his duties, since he had not actually served during that period.

The Board therefore recommended that the CDS partially uphold the grievance; withdraw the C&P and all related documents; impose a more appropriate measure; and consider the grievor for employment as a CIC. The Board also recommended the CDS refer the grievor's case to the Director Claims and Civil Litigation (DCCL) for consideration of financial compensation.

CDS Decision

The CDS partially agreed with the Board's Findings and Recommendations. The CDS concluded the CO's decisions as IA would be set aside. He concluded the grievor's rights to be informed and adequately defend himself against the allegations were violated. The CDS therefore set aside the investigation report recommendations. He further stated he was satisfied that these problems were corrected, noting that the grievor, as part of the grievance process, received disclosure of all documents and was given the opportunity to review them and submit his comments to the CDS.

The CDS determined the CO had failed in his obligation to afford the grievor fair treatment, most notably before taking his decision and by failing to give him an opportunity to make his representations before imposing administrative measures. The C&P, whether warranted or not, therefore had to be quashed and all reference to it be removed from the grievor's files. However, the CDS disagreed with the Board's recommendation that another administrative measure be imposed because the grievor, as he was permanently removed from the CIC, would have no opportunity to correct his alleged poor behaviour under supervision.

The CDS agreed with the Board's conclusion that the grievor was not entitled to back pay retroactive to the date of his removal, as he had not been on active service since his withdrawal. The CDS was of the opinion that, overall, the decision to temporarily relieve the grievor from duties while a summary investigation was carried out was reasonable. However, unlike the Board, the CDS felt that the permanent withdrawal of the grievor was also justified.

The CDS did note that the grievor learned from this experience and, as a result, proposed that he be reconsidered for a CIC position. The grievor would be required to undergo harassment prevention training at that time and meet all the usual conditions for such employment.

Since the CDS concluded that the grievor's permanent removal was justified, he would not forward the file to DCCL.

Errors in Enrolment

Board Findings and Recommendations

The grievor contested the decision to rescind his enrolment offer, which resulted in a reversion in rank from Corporal (Cpl) to Private (Pte), as well as a reduction in pay. Prior to his enrolment, the Recruiting Centre provided the grievor with an Enrolment/Transfer/Posting (ETP) instruction which stated that he would be promoted to Cpl upon successful completion of Basic Recruit Training (BRT) and that his promotion would be made retroactive to his enrolment date, minus any leave without pay. Once he had completed BRT, the grievor was posted, promoted to Cpl and received a pay adjustment, including retroactive pay from his enrolment date. More than a month later, he was advised that his promotion had been amended and that he was not entitled to the rank and pay initially offered on enrolment. As a result, his rank and pay were adjusted to that of Pte and he was subsequently required to reimburse the difference in pay.

The chain of command supported the grievor's claim that he should not have to repay the amount received, that he should be allowed to keep his rank and that his pay should be restored.

The Initial Authority (IA), while sympathetic to the grievor's situation, denied the grievance, noting that an error had been made, but that once it was discovered, it had to be corrected. The IA also stated that the CF could not confer an entitlement that did not exist.

Although the Board found that the facts of the grievor's situation did not meet the strict legal test for negligent misrepresentation, they were nonetheless compelling and, in simple fairness, some financial relief ought to be afforded. The Board also found the CDS would be justified in exercising his authority to waive two months of the time requirement for promotion to the rank in question.

CDS Decision

The CDS agreed with the Board's findings and two of its recommendations. The grievor would receive an additional 60 days of time credit for promotion to Cpl. However, since the grievor did not meet the eligibility requirements, the relinquishment of his Cpl rank and pay were necessary. The CDS was not prepared to promote the grievor to Cpl, as it would be unfair to all other persons subject to the same promotion policies. However, he determined the grievor should not be held responsible for the mistakes contained in his ETP instruction, as the CF erroneously promoted him to Cpl which led to subsequent financial difficulties.

As for the Board's recommendation regarding the due diligence of Recruiting Centres when presenting offers to new recruits, the CDS indicated there was a planned implementation of new measures, including additional training for recruiting staff, to ensure that the recruiting process was as efficient and consistent as possible.

Discretionary power under Home Leave Travel Allowance (HLTA)

Board Findings and Recommendations

While serving outside the country, the grievor was granted three weeks of leave to visit his family in Canada and benefited from Home Leave Travel Assistance (HLTA). The flight that was to take him back to his post was cancelled, forcing him to remain in Canada for two additional days. The grievor sought reimbursement of the lodging and meal expenses incurred following the cancellation of his return flight.

The Initial Authority (IA) denied this request for reimbursement on the grounds that these expenses are expressly excluded from the applicable directive.

As a result of his flight cancellation, the Board found the grievor's leave was extended by two days. It also determined the HLTA directive was properly applied to the grievor's situation and, accordingly, only covered the cost of the most direct means of transportation from the member's home to his place of duty. The CF therefore could not be held responsible for the additional expenses incurred by the grievor after his return flight was cancelled.

The Board found that ministerial discretion could not be exercised in this case because the expenses for which the grievor was seeking reimbursement are expressly excluded by the directive.

The Board found the grievor had been treated in accordance with the applicable directives.

The Board recommended that the CDS deny the grievance.

CDS Decision

The CDS did not agree with the Board's Findings and Recommendation to deny this grievance. Based on a strict analysis of the HLTA policy, the CDS found the grievor received all the benefits to which he was entitled. However, neither the CF, nor the grievor were responsible for the reasonable expenses incurred after his return flight was delayed for 48 hours due to poor weather conditions. The CDS considered it important to determine whether the grievor was in fact on leave or on duty during these 48 hours, before determining responsibility for those expenses.

The CDS was of the view that making travel arrangements and officially communicating with the unit, following the cancellation of the grievor's flight, were more consistent with the notion of work than with the relaxation associated with leave status. The CDS also considered the level of stress that such an event could entail, both for the individual as well as the operational unit, and determined this factor was all the more important during an operational deployment where each period of leave is strictly and rigorously calculated in order to avoid jeopardizing the mission. Consequently, since the grievor should have been considered on duty during the period for which his flight was delayed, the CDS concluded reasonable expenses should be reimbursed by the CF.

FINANCIAL TABLE

PLANNED SPENDING 2008-09	(In dollars)
Salaries, wages and other personnel costs	3,193,221
Contribution to employee benefit plans	542,848
Subtotal	3,736,069
Other operating expenditures	2,130,927
Total planned expenditures	**5,866,996**

December 31, 2008. Actual expenditures will change from the planned spending

BIOGRAPHIES

Chairperson – Bruno Hamel

Full-Time Vice-Chairperson – James Price

Part-Time Vice-Chairperson – Denis Brazeau

Part-Time Members – Mike Auger
– C. Fred Blair
– Carina Anne De Pellegrin

Chairperson

BRUNO HAMEL

Term ending: March 1, 2013

Lieutenant-Colonel (retired) Bruno Hamel was appointed Chairperson of the Board effective March 2, 2009.

The new chair has a lengthy and varied experience in military complaint resolution after many years spent as a senior grievance analyst and, later, as Director Special Grievances Enquiries & Investigations within the Director General Canadian Forces Grievance Authority (DGCFGA).

Mr. Hamel enrolled in the CF in 1983 and served mainly with Army field and training units from 1984 to 1997. This included a two-year exchange posting with the French 1st Corps reconnaissance regiment from 1986 to 1988.

From November 1993 to May 1994, he was deployed in Visoko, Bosnia-Herzegovina, as the Adjutant, with his Regiment, *12ème Régiment blindé du Canada*. In November 1996, he was seconded until May 1997 to the Department of Foreign Affairs and International Trade to be deployed in Kinshasa, Zaire, as a Military Advisor and Liaison Officer during the country's civil war.

From 1997 to 1999, Mr. Hamel attended the *Université du Québec à Hull*, where he graduated with a Bachelor of Administration.

He joined the office of the DGCFGA, as a grievance analyst, from 1999 to 2001. In 2001, he completed his Master of Defence Studies at the Kuwaiti/British Mubarak Al-Abdullah Joint Command and Staff College where he was the first CF officer to be posted and to graduate. He returned in 2002 to DGCFGA as a senior analyst. Promoted to Lieutenant-Colonel in 2003, he held the position of Director Special Grievances Enquiries & Investigations for the most part until his retirement from the CF in 2009. In this capacity, he was responsible for investigating the most complex, sensitive and difficult grievances at the Final Authority (FA) level. He was also asked twice to fulfil, on an interim basis, the duties of DGCFGA and acted as the FA of the grievance process pursuant to the CDS delegation.

In 2008, Mr. Hamel received the Vice-Chief of the Defence Staff Commendation for informally resolving an unprecedented situation.

Between 2006 and 2007, Mr. Hamel also worked as Director General of Operations in the Office of the Ombudsman for the Department of National Defence and the CF.

Full-Time Vice-Chairperson

JAMES PRICE

Term ending: December 9, 2011

James Price was Acting Chairperson of the Board for a year, starting in March 2008. He continues his duties at the Board as full-time Vice-Chairperson

Mr. Price joined the Board in January 2004 as a team leader in Operations Directorate, and was appointed full-time Vice-Chairperson in December of that same year. He brings to the position extensive experience in all areas of military law, including the military justice system, international law and operational law.

Originally from Twillingate, Newfoundland, Mr. Price joined the University Naval Training Division in 1966 while attending Memorial University. After seven years of active service, he attended Dalhousie University, graduating with a Masters of Public Administration in 1976 and a Bachelor of Laws in 1980, the same year he was called to the Bar of Newfoundland.

He engaged in private legal practice before joining the CF in 1981, as a legal officer in the Office of the Judge Advocate General (JAG) of the CF.

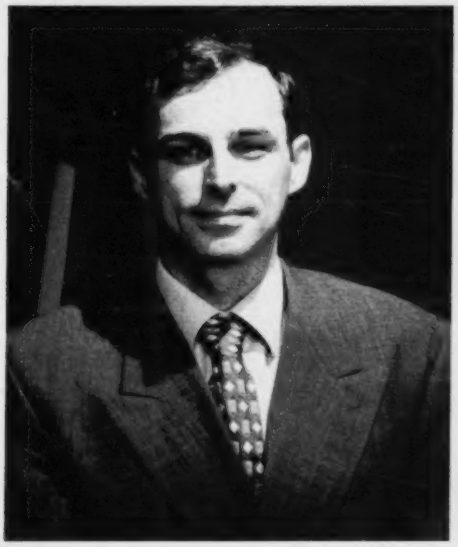
During his time with JAG, Mr. Price served as Director of Prosecutions and Appeals where, in addition to coordinating prosecutions and appeals in the CF, he guided the section through its transition to an independent prosecution service. He subsequently served as the Deputy Director of the new Independent Military Prosecution Service.

After serving as Assistant JAG (Europe), Mr. Price was appointed a military judge by the Governor in Council in 2001, a position he held until 2003. During this time, he presided over cases involving both service offences and offences under the *Criminal Code of Canada*.

Part-Time Vice-Chairperson

DENIS BRAZEAU

Term ending: February 8, 2010



Colonel (retired) Denis Brazeau was appointed as a part-time Member of the Board on June 27, 2006, and subsequently as part-time Vice-Chairperson on February 9, 2007.

Mr. Brazeau was enrolled in the Regular Officer Training Plan in 1975, graduating from the Royal Military College in 1980 with a Bachelors degree in history.

During the next 20 years, Mr. Brazeau served with the *Royal 22e Régiment* (Lahr, Germany and Québec City), the *5e Groupe-Brigade mécanisé du Canada* (CFB Valcartier) and in the Land Force Command Headquarters (St-Hubert, Quebec). In 1996, he took command of the *Royal 22e Régiment Battle School* until his nomination as Chief of Staff and then Deputy Commander of the *5e Groupe de soutien du Secteur du Québec de la Force Terrestre* in 1998.

In 2002, Mr. Brazeau served as Chief of Staff of the *Secteur du Québec de la Force terrestre*. He was appointed as an Officer of the Order of Military Merit by the Governor General in 2004.

Mr. Brazeau's overseas experience also includes service in the Democratic Republic of Congo in 2000 and in Bosnia-Herzegovina in 2001 and 2002.

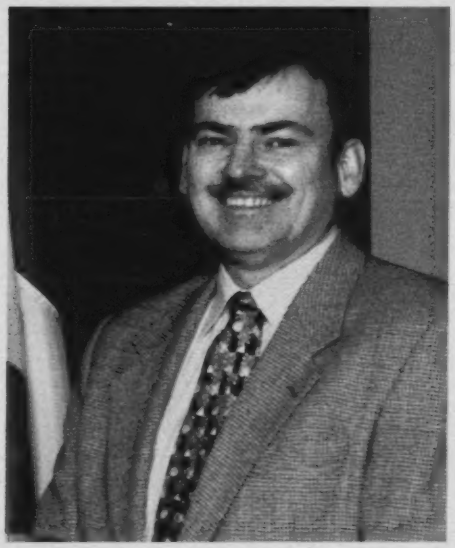
Mr. Brazeau attended the United States Army Command and General Staff College (Fort Leavenworth, Kansas), graduating in 1992. He also completed a Master's degree in War Studies from the Royal Military College in 1999.

In 2005, he completed the Advanced Military Science Course and the National Security Studies Course at the CF College in Toronto. That same year, Mr. Brazeau retired from the CF after thirty years of service.

Part-Time Member

MIKE AUGER

Term ending: September 14, 2009



Lieutenant-Colonel (retired) Mike Auger was appointed as a part-time Member of the Board on September 15, 2006.

Enrolled in the CF in 1970, Mr. Auger graduated from Queen's University in 1973 with an Honours Degree in Geography. Commissioned as an artillery officer, he was posted to the Second Regiment Royal Canadian Horse Artillery (RCHA) in Petawawa, Ontario. Following his promotion to Captain in 1976 and security duties at the Montreal Olympics, he was assigned to the First Regiment RCHA in Lahr, West Germany. Subsequent tours saw postings to Gagetown, New Brunswick, in 1979, as well as Fort Sill, Oklahoma (USA) in 1981 and Petawawa in 1983.

Promoted to Major in 1985, he became Battery Commander of 'D' Battery 2RCHA. In 1988, he served with the 1st Canadian Division Headquarters in Kingston, Ontario, and in 1990, returned to the 2RCHA as Deputy Commanding Officer. In 1991, he was promoted to Lieutenant-Colonel and became head of the Military Occupation Structure Review until 1998 when he became Executive Assistant to the Assistant Deputy Minister of Human Resources - Military. Thereafter, he was section head responsible for military education and training policy in Ottawa until his retirement from the CF in 2005 after nearly thirty-five years of service.

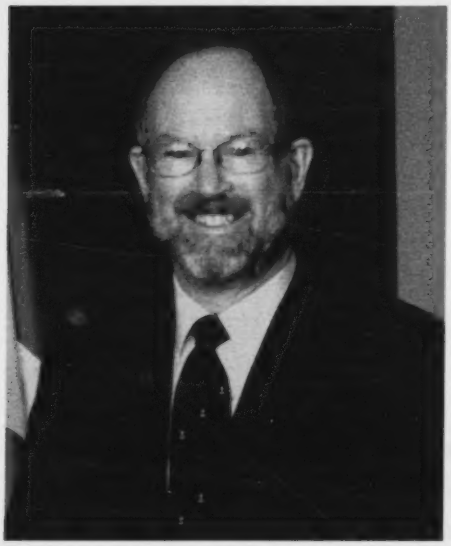
Mr. Auger's military education includes the CF Staff School, the Artillery Staff Duties Course, the Artillery Instructor-in-Gunnery Course and all Officer Professional Development Courses.

Mr. Auger is a sometime mentor to junior officers attending the CF Land Staff College and provides exercise simulation during exercises, including pre-deployment training for the Afghanistan mission.

Part-Time Member

C. FRED BLAIR

Term ending: September 14, 2009



Fred Blair was appointed as a part-time Member of the Board on September 15, 2006.

Mr. Blair is a native of Ottawa. He holds degrees in engineering (Queen's University, 1963) and law (University of Ottawa, 1968).

Mr. Blair was called to the Bar of Ontario in 1970. After practicing law in Ottawa, he enrolled in the office of the Judge Advocate General of the CF in 1972, and served in positions of increasing rank and responsibility until 1999. His service included tours of duty as Senior Legal Adviser for the CF in Europe, and as legal adviser to the Commander of the NATO Stabilization Force in Bosnia.

After his release from the CF, Mr. Blair continued in law as in-house counsel to a publicly-traded company, and then as part-time outside enforcement counsel to the Investment Dealers Association of Canada.

A resident of Wooler, Ontario, he is active in the community as a member of the Board of Directors of the CFB Trenton Military Family Resource Center, and as a member of the Protective Services Committee for the City of Quinte West, Ontario.

Part-Time Member

CARINA ANNE DE PELLEGRIN

Term ending: November 19, 2011

Carina Anne De Pellegrin was appointed as a part-time Member of the Board on November 20, 2008.

Ms. De Pellegrin holds degrees in Computer Engineering (Royal Military College, 1990) and in Common Law (University of Ottawa, 1997) and was called to the Bar of Ontario in 1999.

A member of the CF for nine years, Ms. De Pellegrin served as an aeronautical engineering officer where she acquired a broad knowledge of the CF's structure and policies. As a contracting officer for the Department of National Defence, she has worked closely with many government departments and Canadian defence contracting companies.

Starting in 1997, Ms. De Pellegrin practiced mainly in the area of intellectual property with an emphasis on patent, copyright and licensing law and litigation. She also gained considerable experience in administrative law in the context of federal government procurement cases. Ms. De Pellegrin also has extensive experience appearing before the Federal Court of Canada and the Canadian International Trade Tribunal, as well as contributing to representations to Parliament on amendments to legislation.

In 2008, Ms. De Pellegrin acted as corporate in-house counsel for an Ottawa company where she advised on many corporate legal matters, including employment law issues and human rights legislation. In her capacity as legal counsel, she advised on the resolution of disputes before the Ontario and Quebec Labour Relations Boards and of human rights complaints before the Canadian and Ontario Human Rights Commissions.

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Board Staff

The diverse backgrounds, varied experience and extensive knowledge of the Board's employees are an asset to the CFGB. All are committed and proud to contribute to better working conditions of service for the men and women of the CF.